

REMARKS

Reconsideration and removal of the grounds for rejection are respectfully requested.

Claims 1-6 were in the application, claims 1-6 have been cancelled and new claims 7-15 have been substituted therefore.

The rejection of claims 1-6 under 35 USC 112, second paragraph has been rendered moot by the cancellation of the original claims and presentation of new claims 7-15.

The objection to the specification was noted, and corrections to the headings made where indicated above to better conform to U.S. Practice.

New claims 7-15 have been amended as to form and to correct the numerous grammatical deficiencies, remove the narrative portions and for clarity. By this amendment, new independent claim 7 contains generally the limitations of original claims 1 and 2, new independent claim 10 generally contains the limitations of claims 1 and 3 therein, and new claim 13 contains generally the limitations of claims 1 and 4 therein. Dependent claims 8, 11 and 14 generally contain the limitations of claim 5 therein, and dependent claims 9, 12 and 15 generally contain the limitations of claim 6 therein. No new matter was involved in this amendment.

Claims 1, 4 and 6 were rejected under 35 USC 102(b) as being anticipated by Nicolai et al, U.S. Patent no, 6,123,400.

"The term "anticipation" in patent usage means that the invention was previously known to the public; that is, that it previously existed in the precise form in which it is claimed, including all of the limitations in the claim."

SmithKline Beecham Corp. v. Apotex Corp., 439 F.3d 1312, 1324 (Fed. Cir. 2006) (Emphasis Added.)

"A claim cannot be 'anticipated' by prior art that does not have all of the limitations in the claim." Helifix Ltd. v. Blok-Lok, Ltd., 208 F.3d 1339, 1346 (Fed. Cir. 2000) SmithKline Beecham Corp. v. Apotex Corp., 439 F.3d 1312, 1324

(Fed. Cir. 2006).

It is believed that this rejection has been rendered moot as Nicolai fails to include each and every element of new claims 7, and 13 therein. In particular Nicolai fails to include the coupling device of the applicants invention together with the mating dowel (claim 7) or having the exposed surfaces for joining by welding (claim 13). Absent strict identity, new claims 7, 13 and the claims depending therefrom are not anticipated by Nicolai.

Claims 2 and 3 were rejected as being obvious over Nicolai et al in view of EP948916.

In conducting an obviousness analysis, "[a] fact finder should be aware . . . of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning." KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742, 167 L. Ed. 2d 705 (2007). This is because the genius of invention is often a combination of known elements that in hindsight seems preordained. In re Omeprazole Patent Litig., No. MDL 1291, 490 F. Supp. 2d 381, 2007 U.S. Dist. LEXIS 39670, at *400-01 (S.D.N.Y. May 31, 2007) (citation omitted) (quoting KSR, 127 S.Ct at 1742); see also Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138 (Fed. Cir. 1985), Raytheon Co. v. Roper Corp., 724 F.2d 951, 961 (Fed. Cir. 1983) (stating that "virtually every claimed invention is a combination of old elements"(Emphasis added)).

"It is not within the framework of 35 U.S.C. Section 103 to pick and choose from the prior art only so much as will support a holding of obviousness to the exclusion of other parts necessary for a full appreciation of what the prior art teaches or suggests, as hindsight is not the test. In re Wesslau, 353 F.2d 238 (CCPA 1965). The Examiner "cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." In re Fine, 837 F.2d 1071, 1075, 5 U.S.P.Q.2D (BNA) 1596 (Fed. Cir. 1988).

The examiner must guard against reliance on "hindsight", best explained

as follows:

The genius of invention is often a combination of known elements which in hindsight seems preordained. To prevent hindsight invalidation of patent claims, the law requires some "teaching, suggestion or reason" to combine cited references. Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579, 42 U.S.P.Q.2D (BNA) 1378, 1383 (Fed. Cir. 1997). When the art in question is relatively simple, as is the case here, the opportunity to judge by hindsight is particularly tempting. Consequently, the tests of whether to combine references need to be applied rigorously. See In re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2D (BNA) 1614, 1617 (Fed. Cir. 1999), limited on other grounds by In re Gartside, 203 F.3d 1305, 53 U.S.P.Q.2D (BNA) 1769 (2000) (guarding against falling victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher). McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351, 60 U.S.P.Q.2D (BNA) 1001, 1008 (Fed. Cir. 2001).

Moreover, to support a conclusion that a claim would have been obvious, it must be established that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art. KSR, at 416-417.

In the rejection, the examiner admitted that Nicolai fails to disclose the threaded hole on the cross section that is vertically oriented and also fails to disclose the mating dowel fitted into the connector piece. The examiner cites EP '916 as supplying the missing elements. However, even with the combination, the applicants' invention is not achieved.

New claims 7 and 13 combine the limitations of original claims 1 and 2 therein, and 1 and 3 therein, respectively, but also clarify that each upright (P2) has a square tubular opening, and wherein the coupling device (9) is a square

dowel (10) having a lower end tightly fitted inside the square tubular opening (T) of the upright (P2), the coupling device having a vertically oriented threaded hole (F) at its upper end.

Further, each coupling device has a horizontal through hole (16), each cross sectional connector (P1) having a mating dowel (12) fitted therein, each mating dowel having a longitudinal threaded hole (13) therein, and having means for aligning the longitudinal threaded hole with the horizontal through hole of the respective coupling device (14).

A screw (17) is passable through the horizontal through hole for fixing the coupling device to the mating dowel (12) and thereby to the cross sectional connectors (P1). Also, the means for aligning comprise self locking fittings in claim 7, extending from a surface of the mating dowel, the coupling device having receptacles for receiving the self locking fittings therein, or an off center pin, as described in claim 13.

There are thus numerous elements of claims 7 and 13 that are not found in the combination of references, and moreover, no specific structures to perform the particular functions outlined in claims 7 or 13. Consequently, claims 7, 13 and the claims depending therefrom are not believed to be rendered obvious by the proposed combination.

Claim 5 was rejected as being unpatentable over Nicolai et al in view of Benner et al, U.S. Patent no. 6,155,434.

The Examiner admitted that Nicolai failed to disclose the teeth and shafts as required by claim 5, now claims 8, 11 and 14, citing Benner as supplying the missing elements. However, each of claims 8, 11 and 14 depend from and contain all the limitations of a proceeding independent claim, and as discussed

above, each of these independent claims is believed to be patentable over the cited art. Consequently, claims 8, 11 and 14, which depend from and contain all the limitations of an allowable claim are also patentable over the proposed combination.

Based on the above, favorable consideration and allowance of the application is respectfully requested. However, should the examiner believe that direct contact with the applicant's attorney would advance the prosecution of the application the examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,

COLEMAN SUDOL SAPONE, P.C.
714 Colorado Avenue
Bridgeport, Connecticut 06605-1601
Telephone No. (203) 366-3560
Facsimile No. (203) 335-6779

/WJS/
William J. Sapone
Registration No. 32,518
Attorney for Applicant(s)